

EXHIBIT D

1 JOSEPH H. HUNT

2 Assistant Attorney General

3 JEFFREY S. ROBINS

4 Deputy Director

5 SARAH B. FABIAN

6 MICHAEL HEYSE

7 Trial Attorney

8 LINDSAY M. VICK

9 Trial Attorney

10 NICOLE N. MURLEY

11 Senior Litigation Counsel

12 U.S. Department of Justice

13 Office of Immigration Litigation

14 PO Box 868, Ben Franklin Station

15 Washington, DC 20044

16 Nicole.Murley@usdoj.gov

17 Telephone: (202) 616-0473

18 Fax: (202) 616-8962

19 Attorneys for Defendants

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Ms. J.P., et al.,

Plaintiffs,

v.

WILLIAM P. BARR, et al.,

Defendants.

Case No. 2:18-cv-06081-JAK-SK

Assigned to the Hon. John A. Kronstadt

**DEFENDANT DEPARTMENT OF JUSTICE’S AND FORMER ATTORNEY
GENERAL SESSIONS’ SUPPLEMENTAL RESPONSES TO PLAINTIFFS’
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Civil Rules for the Central District of California, Defendant Department of Justice (“DOJ”) and William P. Barr,¹ Attorney General of the United States (collectively, “DOJ Defendants” or “Defendants”), by and through their attorney, Nicole N. Murley, Senior Litigation Counsel, District Court Section, Office of Immigration Litigation, United States Department of Justice, hereby submit their Objections and Responses to Plaintiffs’ First Set of Requests for Production of Documents (“RFP”), propounded on January 10, 2019.

RESERVATION OF RIGHTS

Defendants expressly reserve the right to supplement, clarify, revise or correct any or all of the responses herein at any time. By making the following objections and responses to Plaintiffs’ RFPs, Defendants do not waive, and hereby expressly reserve, the right to assert any and all objections to the admissibility of such responses into evidence at the trial of this action, or in any other proceedings, on any and all

¹ Because Jeffrey B. Sessions III was named in his official capacity, William P. Barr will be substituted as a defendant in this action. *See* ECF No. 251.

1 grounds, including, but not limited to, competency, relevancy, materiality, and
2 privilege. Defendants' Objections are based on the information known to Defendants
3 at this time and are made without prejudice to assertion of additional objections
4 should Defendants identify additional grounds for objection. Furthermore,
5 Defendants respond herein without, in any manner, admitting or implying that
6 Plaintiffs' Requests (or Defendants' responses) are relevant to any party's claim or
7 defense or proportionate to the needs of the case. Any response contained herein will
8 be subject to any protective order subsequently entered in this case. Defendants will
9 supplement our responses consistent with the requirements of Rule 26(e) as
10 additional information becomes available.

11
12 **OBJECTIONS THAT APPLY TO ALL REQUESTS FOR PRODUCTION**

13 Defendants object to Plaintiffs' RFPs to the extent they call for documents that
14 are publicly available, are already in the custody or control of Plaintiffs or Plaintiffs'
15 counsel, are readily accessible to Plaintiffs, or that would otherwise be less
16 burdensome for Plaintiffs to obtain than for Defendants. *See* Fed. R. Civ. P.
17 26(b)(2)(C)(i).

18 Defendants object to Plaintiffs' RFPs to the extent that they fail to specify any
19 time limitation. Defendants have limited the time period for responding to these
20 requests and agree to produce responsive documents from July 1, 2017, to January
21 10, 2019, unless otherwise noted.

22 Defendant DOJ also objects to the extent that Plaintiffs' first requests for
23 production of documents and things seeks information not covered by the Protective
24 Order in this case and that may be otherwise protected from disclosure under the
25 Privacy Act, 5 U.S.C. § 552a, DHS/DOJ policy regarding the application of the
26 Privacy Act to "visitors and aliens," the Freedom of Information Act, 5 U.S.C. § 552,
27 and the Inspector General Act of 1978, 5 U.S.C. App. 3, § 7(b).

OBJECTIONS THAT APPLY TO DEFINITIONS AND INSTRUCTIONS

1. Defendants object to the definition of “COMMUNICATION(S),” which is defined so broadly as to include verbal or non-written communications and is beyond the scope of Rule 34. *See* Fed. R. Civ. P. 34 (allowing requests to inspect or produce documents, electronically stored information, or tangible items).

2. Defendants object to Plaintiffs’ definition of the terms “DEFENDANTS,” “YOU” or “YOUR” in Definitions 2 and 8 on the grounds that each definition is overly broad and unduly burdensome. In particular, these definitions encompass the entirety of the DOJ, the Department of Homeland Security (“DHS”), and the Department of Health and Human Services (“HHS”), including subordinate entities, components, and employees having no involvement whatsoever with the claims in Plaintiffs’ Complaint. Defendants further object to Definitions 2 and 8 to the extent they purport to require the disclosure of information in the possession, custody, or control of entities other than Defendants, Fed. R. Civ. P. 34, or seek information that can and should be sought from another entity. Defendants further object to Plaintiffs’ Definitions 2 and 8 because they purport to require a government-wide search for documents. Such a government-wide search would be oppressive, overly burdensome, and overbroad, given the claims and defenses in this matter, which relate to a discrete issue.

Subject to specific objections enumerated below and in subsequent objections, Defendants interpret the definition of YOU or DEFENDANTS, as including William P. Barr, Attorney General of the United States only, in his official capacity or entities or individuals from whom Attorney General Barr has the legal right to obtain information relevant to the claims and defenses in this case. The other Federal Defendants in this case are Defendant DHS, U.S. Immigration and Customs Enforcement (“ICE”), and U.S. Customs and Border Protection (“CBP”) (collectively, “DHS Defendants”) and Defendant HHS and Office of Refugee Resettlement (“ORR”) (collectively, “HHS Defendants”).

1 DOJ Defendants object and respond to these requests solely on behalf of DOJ,
2 as indicated in each response. To the extent that these requests seek information from
3 DHS or HHS, DOJ Defendants direct Plaintiffs to DHS and HHS Defendants who
4 can provide responses and objections to requests directed to those agencies.

5 3. Defendants object to the definition of “POSSESSION” to the extent that it does
6 not conform to the Ninth Circuit standard for possession, custody, or control. In the
7 Ninth Circuit, the standard for possession, custody, or control is the legal right to
8 obtain documents. *See 7-UP Bottling Co. v. Archer Daniels Midland Co. (In re Citric*
9 *Acid Litig.)*, 191 F.3d 1090, 1107 (9th Cir. 1999). Defendants are only under the
10 obligation to produce relevant, non-privileged information, to the extent that it exists,
11 if individuals, operating in their official governmental capacity, have responsive,
12 non-privileged information that is under the possession, custody, or control of the
13 named Defendants or that the named Defendants have the legal right to obtain on
14 demand. *Id.*

15 4. Defendants object to the definition of “PUTATIVE CLASS MEMBER”
16 because the Court certified a class with two subclasses on November 5, 2019. The
17 certified class is defined as:

18 All adult parents nationwide who entered the United States at or between
19 designated ports of entry, who (1) on or after July 1, 2017, were, are, or
20 will be detained in immigration custody by DHS; and (2) have a minor
21 child who has been, is, or will be separated from them by DHS and
22 detained in DHS or Office of Refugee Resettlement custody or foster
23 care, absent a demonstration in a hearing that the parent is unfit or
presents a danger to the child.

24 The Court certified the following subclasses:

25
26 (i) the Custody Subclass, which is defined as all members of the class
27 who are currently or will be detained in immigration custody by DHS;
28 and (ii) the Released Subclass, which is defined as all members of the

1 class who were previously detained in immigration custody by DHS, but
2 who have since been released.

3 Pursuant to the Court's November 5, 2019 Order, Defendants will
4 construe any references to the putative class as the certified class as defined by
5 the Court.

6 5. DOJ Defendants object to the definition of "ZERO TOLERANCE
7 SEPARATION" as the "United States Government's pattern, practice, or policy of
8 separating migrant parents and children held in immigration detention without a
9 showing that the parent was unfit or presented a danger to the minor child that
10 preliminary enjoined in *Ms. L. v. U.S. Immigration and Customs Enforcement*, No.
11 3:18-cv-00428 (S.D. Cal. June 26, 2018) (Sabraw, J.)." First, DOJ Defendants object
12 to the Plaintiffs' characterization of the preliminary injunction in *Ms. L. v. U.S.*
13 *Immigration and Customs Enforcement*, No. 3:18-cv-00428 (S.D. Cal. June 26,
14 2018), as it misstates the holdings in that case. Second, the Zero Tolerance Policy
15 issued by then-Attorney General Sessions, dated April 6, 2018, sets forth a policy
16 regarding referrals for criminal prosecution under 8 U.S.C. § 1325(a). Defendants
17 define the Zero Tolerance Policy as a policy that directed each U.S. Attorney's Office
18 along the Southwest Border to adopt a policy to prosecute all DHS referrals of section
19 1325(a) violations, to the extent practicable. On May 11, 2018, then-Secretary
20 Nielsen issued a memorandum directing "all DHS law enforcement officers at the
21 border to refer all illegal border crossers to the Department of Justice for criminal
22 prosecution to the extent practicable."

**DEFENDANT DOJ’S AND ATTORNEY GENERAL WILLIAM P. BARR’S
RESPONSES TO PLAINTIFFS’ FIRST SET OF RFPS**

REQUEST FOR PRODUCTION NO. 1

DOCUMENTS sufficient to identify all PUTATIVE CLASS MEMBERS.

Responses and Objections:

DOJ Defendants object to this request to the extent Plaintiffs purport to require the disclosure of information in the possession, custody, or control of entities other than DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be sought from another entity. To the extent that this request also appears to seek information from DHS or HHS, DOJ Defendants direct Plaintiffs to DHS and HHS Defendants who can provide responses and objections to requests directed to those agencies. *See* DHS and HHS Responses to RFP No. 1. Accordingly, DOJ Defendants do not have any responsive documents.

REQUEST FOR PRODUCTION NO. 2

All DOCUMENTS relating to the decision to adopt the ZERO TOLERANCE SEPARATION Policy, including but not limited to DOCUMENTS related to the potential effects of the ZERO TOLERANCE SEPARATION Policy on the mental health of separated parents and children.

Responses and Objections:

DOJ Defendants object to this request to the extent it seeks information regarding a “Zero Tolerance Separation Policy,” which does not exist. As previously stated, the “Zero Tolerance Policy” issued by then-Attorney General Sessions, dated April 6, 2018, sets forth a policy regarding referrals for criminal prosecution under 8

1 U.S.C. § 1325(a). Defendants define the Zero Tolerance Policy as a policy that
2 directed each U.S. Attorney's Office along the Southwest Border to adopt a policy to
3 prosecute all DHS referrals of section 1325(a) violations, to the extent practicable.
4 On May 11, 2018, then-Secretary Nielsen issued a memorandum directing "all DHS
5 law enforcement officers at the border to refer all illegal border crossers to the
6 Department of Justice for criminal prosecution to the extent practicable."

7 DOJ Defendants object to Request for Production No. 2 as overbroad because
8 it seeks documents and information that are not relevant to the claims and defenses
9 in this case. *See* Fed. R. Evid. 401 (defining "relevance"); Fed. R. Civ. Procedure
10 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is
11 relevant to any party's claim or defense and proportional to the needs of the case,
12 considering the importance of the issues at stake in the action, the amount in
13 controversy, the parties' relative access to relevant information, the parties'
14 resources, the importance of the discovery in resolving the issues, and whether the
15 burden or expense of the proposed discovery outweighs its likely benefit."). Request
16 for Production No. 2 seeks "all" documents relating to the decision to adopt the Zero
17 Tolerance Separation Policy, regardless of whether that information pertains to the
18 impact of the separations—that occurred as a result of the Zero Tolerance Policy—
19 mental health effects of the alleged family separation policy. Documents and
20 information regarding Defendants' decision to implement the Zero Tolerance Policy
21 is not relevant to Plaintiffs' claims or the relief sought in this case. *See generally*
22 Complaint, ECF No. 1 ("Compl.") (requesting a court order requiring Defendants to
23 provide mental-health screenings before and after reunification to assess Plaintiffs'
24 need for subsequent trauma-informed medical and mental-health services and to offer
25 appropriate trauma-informed medical and mental-health services).² Specifically, the

26 ² Plaintiffs' claims for relief center around their allegations that by forcibly separating
27 Plaintiffs from their children, Defendants have inflicted upon Plaintiffs extraordinary
28 harm that they would not have otherwise faced. They further allege that this
separation caused exceptional distress and trauma and that the plaintiffs have not
received any mental health services from the government since they were separated.

1 how or why of the policy has no bearing on Plaintiffs' request for mental health
2 screenings and trauma-informed mental health treatment for class members that
3 Plaintiffs allege is necessary to assess the effect of the separation on class members.

4 DOJ Defendants further object to this request based on relevance, as any
5 response is not likely to lead to the discovery of admissible evidence and, consistent
6 with Fed. R. Civ. P. 26(b)(1), seeks documents and information not relevant to the
7 Plaintiffs' claims or defenses, nor is the burden of such production proportional to
8 the needs of the case. Moreover, DOJ Defendants object that this request is not
9 limited to information generated or existing during a time period that is relevant to
10 the Parties' claims and defenses. DOJ Defendants object to this request as vague and
11 ambiguous on the basis that it is unclear what is meant by the terms "potential effects"
12 and "mental health." Finally, DOJ Defendants also object to the request to the extent
13 that it seeks the production of deliberative and pre-decisional or otherwise privileged
14 information. Accordingly, Defendant DOJ will not produce documents for this
15 request.

16
17 **REQUEST FOR PRODUCTION NO. 3**

18 All DOCUMENTS related to the potential or actual effects of the ZERO
19 TOLERANCE SEPARATION Policy on the mental health of separated parents and
20 children.

21
22 **Responses and Objections:**

23 DOJ Defendants object to this request to the extent it appears to require the
24 disclosure of information in the possession, custody, or control of entities other than
25 DOJ Defendants, Fed. R. Civ. P. 34. To the extent that this request appears to seek
26 information from DHS or HHS, DOJ Defendants direct Plaintiffs to DHS and HHS
27 Defendants who can provide responses and objections to requests directed to those
28

1 agencies. Moreover, DOJ Defendants object to this request to the extent it seeks
2 information regarding a “Zero Tolerance Separation Policy,” which does not exist.
3 The Zero Tolerance Policy issued by then-Attorney General Sessions, dated April 6,
4 2018, sets forth a policy regarding referrals for criminal prosecution under 8 U.S.C.
5 § 1325(a). Defendants define the Zero Tolerance Policy as a policy that directed each
6 U.S. Attorney’s Office along the Southwest Border to adopt a policy to prosecute all
7 DHS referrals of section 1325(a) violations, to the extent practicable. On May 11,
8 2018, then-Secretary Nielsen issued a memorandum directing “all DHS law
9 enforcement officers at the border to refer all illegal border crossers to the
10 Department of Justice for criminal prosecution to the extent practicable.”

11 DOJ Defendants further object to this request as overly broad and unduly
12 burdensome and not limited in time or scope. Request for Production No. 3 is not
13 limited to information generated or existing during a time period that is relevant to
14 the Parties’ claims and defenses. *See* Fed. R. Evid. 401 (defining “relevance”); Fed.
15 R. Civ. Procedure 26(b)(1). DOJ Defendants object to this request as it appears to
16 require a government-wide search for documents. Such a government-wide search
17 would be oppressive, overly burdensome, and overbroad given the claims and
18 defenses in this matter. *See generally* Compl., ECF No. 1. DOJ Defendants object to
19 this request as vague and ambiguous on the basis that it is unclear what is meant by
20 “potential or actual effects” and “mental health.” DOJ Defendants also object to the
21 request to the extent that it seeks the production of deliberative and pre-decisional or
22 otherwise privileged information. Based on these objections, DOJ Defendants will
23 not produce documents for this request.

24
25 **REQUEST FOR PRODUCTION NO. 4**

26 All DOCUMENTS related to YOUR press releases or internal memoranda that
27 announced, explained, or implemented the ZERO TOLERANCE SEPARATION
28 Policy, including but not limited the internal memoranda themselves, drafts of those

1 press releases or internal memoranda, and any memoranda or guidance about how to
2 respond to questions from media or PUTATIVE CLASS MEMBERS.

3
4 Responses and Objections:

5 DOJ Defendants object to this request to the extent it seeks information
6 regarding a “Zero Tolerance Separation Policy,” which does not exist. The Zero
7 Tolerance Policy issued by then-Attorney General Sessions, dated April 6, 2018, sets
8 forth a policy regarding referrals for criminal prosecution under 8 U.S.C. § 1325(a).
9 Defendants define the Zero Tolerance Policy as a policy that directed each U.S.
10 Attorney’s Office along the Southwest Border to adopt a policy to prosecute all DHS
11 referrals of section 1325(a) violations, to the extent practicable. On May 11, 2018,
12 then-Secretary Nielsen issued a memorandum directing “all DHS law enforcement
13 officers at the border to refer all illegal border crossers to the Department of Justice
14 for criminal prosecution to the extent practicable.”

15 DOJ Defendants object to Request for Production No. 4 as overbroad because
16 it seeks documents and information that are not relevant to the claims and defenses
17 in this case. *See* Fed. R. Evid. 401 (defining “relevance”); Fed. R. Civ. Procedure
18 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is
19 relevant to any party’s claim or defense and proportional to the needs of the case,
20 considering the importance of the issues at stake in the action, the amount in
21 controversy, the parties’ relative access to relevant information, the parties’
22 resources, the importance of the discovery in resolving the issues, and whether the
23 burden or expense of the proposed discovery outweighs its likely benefit.”). Request
24 for Production No. 4 seeks “all” documents relating to the press releases and internal
25 memoranda that announced, explained, or implemented the “Zero Tolerance
26 Separation Policy,” regardless of whether that information pertains to the alleged
27 mental health effects of the alleged family separation policy. Documents and
28 information regarding Defendants’ decision to implement the Zero Tolerance Policy

1 is not relevant to Plaintiffs' claims or the relief sought in this case. Specifically, the
2 how or why of the policy has no bearing on Plaintiffs' request for mental health
3 screenings and trauma-informed mental health treatment for class members that
4 Plaintiffs allege is necessary to assess the effect of separation on class members. *See*
5 *generally* Compl., ECF No. 1. DOJ Defendants further object that Request for
6 Production No. 4 seeks information that is publicly available or available from other
7 sources. *See* Fed. R. Civ. P. 26(b)(2)(C)(i) ("[T]he court must limit the frequency or
8 extent of discovery [that] can be obtained from some other source that is more
9 convenient, less burdensome, or less expensive."). Finally, DOJ Defendants also
10 object to the request to the extent that it seeks the production of deliberative and pre-
11 decisional or otherwise privileged information. Based on these objections, DOJ
12 Defendants will not produce documents for this request.

13 14 **REQUEST FOR PRODUCTION NO. 5**

15 All DOCUMENTS relating to the consideration of family separation as a
16 means to deter immigration, including but not limited to the consideration of family
17 separation discussed by then-DHS Secretary John Kelly on CNN on or about March
18 6, 2017.

19 20 **Responses and Objections:**

21 DOJ Defendants object to Request for Production No. 5 as overbroad because
22 it seeks documents and information that are not relevant to the claims and defenses
23 in this case. *See* Fed. R. Evid. 401 (defining "relevance"); Fed. R. Civ. Procedure
24 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is
25 relevant to any party's claim or defense and proportional to the needs of the case,
26 considering the importance of the issues at stake in the action, the amount in
27 controversy, the parties' relative access to relevant information, the parties'
28 resources, the importance of the discovery in resolving the issues, and whether the

1 burden or expense of the proposed discovery outweighs its likely benefit.”). Request
2 for Production No. 5 seeks “all” documents relating to “the consideration of family
3 separation as a means to deter immigration,” regardless of whether that information
4 pertains to the alleged mental health effects of the alleged family separation policy.
5 Specifically, the how or why of the policies has no bearing on Plaintiffs’ request for
6 mental health screenings and trauma-informed mental health treatment for class
7 members that Plaintiffs allege is necessary to assess the effect of separation on class
8 members. To this extent that this request references a statement, this request does not
9 specify to which statement the request refers. DOJ Defendants further object to this
10 request as vague and ambiguous on the basis that it is unclear what is meant by
11 “relating to consideration of family separation.” Moreover, because this request
12 appears to require a government-wide search for documents. Such a government-
13 wide search would be oppressive, overly burdensome and overbroad, given the
14 claims and defenses in this matter, which relate to a discrete issue. Further, this
15 request is overly broad and unduly burdensome in that it does not provide any data
16 parameters or limitation on the request for documents. And this request is not limited
17 to information generated or existing during a time period that is relevant to the
18 Parties’ claims and defenses. Finally, DOJ Defendants also object to the request to
19 the extent that it seeks the production of deliberative and pre-decisional or otherwise
20 privileged information. Based on these objections, DOJ Defendants will not produce
21 documents for this request.

22
23 **REQUEST FOR PRODUCTION NO. 6**

24 All DOCUMENTS relating to YOUR consideration of alternatives to
25 detention of the PUTATIVE CLASS MEMBERS that would allow families to remain
26 together, including but not limited to community supported models such as the
27 Family Case Management Program that was initially implemented in January 2016.
28

1 Responses and Objections:

2 DOJ Defendants object to this request to the extent Plaintiffs purport to require
3 the disclosure of information in the possession, custody, or control of entities other
4 than DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
5 sought from another entity. Finally, DOJ Defendants also object to the request to the
6 extent that it seeks the production of deliberative and pre-decisional or otherwise
7 privileged information. To the extent that this request appears to seek information
8 from DHS, DOJ Defendants direct Plaintiffs to DHS Defendants who can provide
9 responses and objections to requests directed to those agencies. Accordingly, DOJ
10 Defendants do not have any responsive documents.

11
12 **REQUEST FOR PRODUCTION NO. 7**

13 All DOCUMENTS related to the decision to close the Family Case
14 Management Program in 2017.

15
16 Responses and Objections:

17 DOJ Defendants also object to the request to the extent that it seeks the
18 production of deliberative and pre-decisional or otherwise privileged information.
19 DOJ Defendants object to this request to the extent Plaintiffs purport to require the
20 disclosure of information in the possession, custody, or control of entities other than
21 DOJ Defendants, Fed. R. Civ. P. 34, or to the extent, Plaintiffs seek information that
22 can and should be sought from another entity. To the extent that this request appears
23 to seek information from DHS, DOJ Defendants direct Plaintiffs to DHS Defendants
24 who can provide responses and objections to requests directed to those agencies.

1 **REQUEST FOR PRODUCTION NO. 8**

2 All DOCUMENTS relating to any programs YOU have implemented to
3 mitigate or remediate the mental health impact of the ZERO TOLERANCE
4 SEPARATION POLICY on the PUTATIVE CLASS MEMBERS or their children.
5

6 **Responses and Objections:**

7 DOJ Defendants object to this request to the extent it seeks information
8 regarding a “Zero Tolerance Separation Policy,” which does not exist. The Zero
9 Tolerance Policy issued by then-Attorney General Sessions, dated April 6, 2018, sets
10 forth a policy regarding referrals for criminal prosecution under 8 U.S.C. § 1325(a).
11 Defendants define the Zero Tolerance Policy as a policy that directed each U.S.
12 Attorney’s Office along the Southwest Border to adopt a policy to prosecute all DHS
13 referrals of section 1325(a) violations, to the extent practicable. On May 11, 2018,
14 then-Secretary Nielsen issued a memorandum directing “all DHS law enforcement
15 officers at the border to refer all illegal border crossers to the Department of Justice
16 for criminal prosecution to the extent practicable.”

17 DOJ Defendants further object to this request as overly broad and unduly
18 burdensome and not limited in time or scope. Request for Production No. 8 is not
19 limited to information generated or existing during a time period that is relevant to
20 the Parties’ claims and defenses. DOJ Defendants object to this request as vague and
21 ambiguous on the basis that it is unclear what is meant by “mental health impact.”
22 Finally, DOJ Defendants also object to the request to the extent that it seeks the
23 production of deliberative and pre-decisional or otherwise privileged information.

24 DOJ Defendants object to this request to the extent Plaintiffs purport to require
25 the disclosure of information in the possession, custody, or control of entities other
26 than DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
27 sought from another entity. DOJ Defendants are not the entity statutorily responsible
28 for the custody and care of individuals in detention. Defendant DOJ refers Plaintiffs

1 to DHS and HHS Defendants. To the extent that this request appears to seek
2 information from DHS and HHS, DOJ Defendants direct Plaintiffs to DHS and HHS
3 Defendants who can provide responses and objections to requests directed to those
4 agencies. *See* DHS and HHS Responses to RFP No. 8. Accordingly, DOJ Defendants
5 do not have any responsive documents.

6
7 **REQUEST FOR PRODUCTION NO. 9**

8 All DOCUMENTS, analyses, reports, and drafts thereof supporting Defendant
9 Nielsen's assertion that the ZERO TOLERANCE SEPARATION Policy was
10 necessary due to the marked increase in the number of adults arriving at the border
11 with children and fraudulently claiming to be a family unit.

12
13 **Responses and Objections:**

14 DOJ Defendants object to this request to the extent it seeks information
15 regarding a "Zero Tolerance Separation Policy," which does not exist. The Zero
16 Tolerance Policy issued by then-Attorney General Sessions, dated April 6, 2018, sets
17 forth a policy regarding referrals for criminal prosecution under 8 U.S.C. § 1325(a).
18 On May 11, 2018, then-Secretary Nielsen issued a memorandum directing "all DHS
19 law enforcement officers at the border to refer all illegal border crossers to the
20 Department of Justice for criminal prosecution to the extent practicable."

21 DOJ Defendants object to this request as ambiguous, as it fails to identify a
22 specific statement or representation by former Secretary Nielsen for which related
23 documents are sought. DOJ Defendants also object to the request to the extent that it
24 seeks the production of deliberative and pre-decisional or otherwise privileged
25 information.

26 DOJ Defendants further object to Request for Production No. 9 as overbroad
27 because it seeks documents and information that are not relevant to the claims and
28 defenses in this case. To the extent that Plaintiffs seek information regarding the

1 government's decision to implement the Zero Tolerance Policy, this decision has no
2 bearing on Plaintiffs' request for mental health screenings and trauma-informed
3 mental health treatment for class members that Plaintiffs allege is necessary to assess
4 the effect of separation on class members. *See* Fed. R. Evid. 401(defining
5 "relevance"); Fed. R. Civ. Procedure 26(b)(1) ("Parties may obtain discovery
6 regarding any nonprivileged matter that is relevant to any party's claim or defense
7 and proportional to the needs of the case, considering the importance of the issues at
8 stake in the action, the amount in controversy, the parties' relative access to relevant
9 information, the parties' resources, the importance of the discovery in resolving the
10 issues, and whether the burden or expense of the proposed discovery outweighs its
11 likely benefit."). This request is also not limited to information generated or existing
12 during a time period that is relevant to the Parties' claims and defenses.

13 DOJ Defendants object to this request to the extent Plaintiffs purport to require
14 the disclosure of information in the possession, custody, or control of entities other
15 than DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
16 sought from another entity. Then-Secretary Nielson was the Secretary of the
17 Department of Homeland Security—a separate agency from the Department of
18 Justice. To the extent that this request appears to seek information from DHS, DOJ
19 Defendants direct Plaintiffs to DHS Defendants who can provide responses and
20 objections to requests directed to that agency. Finally, DOJ Defendants also object to
21 the request to the extent that it seeks the production of deliberative and pre-decisional
22 or otherwise privileged information. Based on these objections, DOJ Defendants will
23 not produce documents for this request.

24
25 **REQUEST FOR PRODUCTION NO. 10**

26 All DOCUMENTS, analyses, reports, and drafts thereof supporting President
27 Trump's statement that 80 percent of migrants who are released never show up for
28 their immigration hearings and disappear into the country.

Responses and Objections:

DOJ Defendants object to Request for Production No. 10 as overbroad because it seeks documents and information that are not relevant to the claims and defenses in this case. An alleged statement regarding the percentage of migrants who abscond into the interior has no bearing on Plaintiffs' request for mental health screenings and trauma-informed mental health treatment for class members that Plaintiffs allege is necessary to assess the effect of separation on class members. *See* Fed. R. Evid. 401 (defining "relevance"); Fed. R. Civ. Procedure 26(b)(1). This request is overly broad and unduly burdensome in that it does not provide any data parameters or limitation on the request for documents. This request is not limited to information generated or existing during a time period that is relevant to the Parties' claims and defenses.

DOJ Defendants object to this request to the extent Plaintiffs purport to require the disclosure of information in the possession, custody, or control of entities other than DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be sought from another entity. Finally, DOJ Defendants also object to the request to the extent that it seeks the production of deliberative and pre-decisional or otherwise privileged information. Based on these objections, DOJ Defendants will not produce documents for this request.

REQUEST FOR PRODUCTION NO. 11

All DOCUMENTS related to the testimony Commander Jonathan White, Deputy Director for Children's Programs of the Office of Refugee Resettlement, before the Senate Judiciary Committee on or about July 31, 2018, including but not limited to documents used in or reflecting Commander White's preparation for that testimony and documents related to his testimony that concerns were raised during the deliberative process about the potential harm to children resulting from family separation.

1 Responses and Objections:

2 DOJ Defendants also object to the request to the extent that it seeks the
3 production of deliberative and pre-decisional or otherwise privileged information.
4 DOJ Defendants object to this request to the extent Plaintiffs purport to require the
5 disclosure of information in the possession, custody or control of entities other than
6 DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
7 sought from another entity. Defendant DOJ refers Plaintiffs to HHS Defendants. To
8 the extent that this request appears to seek information from HHS, DOJ Defendants
9 direct Plaintiffs to HHS Defendants who can provide responses and objections to
10 requests directed to that agency. *See* HHS Response to RFP No. 11. Accordingly,
11 DOJ Defendants do not have any responsive documents
12

13 **REQUEST FOR PRODUCTION NO. 12**

14 All DOCUMENTS relating to any health examination of any PUTATIVE
15 CLASS MEMBERS or their children while in government custody.
16

17 Responses and Objections:

18 DOJ Defendants also object to the request to the extent that it seeks the
19 production of deliberative and pre-decisional or otherwise privileged information.
20 DOJ Defendants object to this request to the extent Plaintiffs purport to require the
21 disclosure of information in the possession, custody, or control of entities other than
22 DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
23 sought from another entity. To the extent that this request appears to seek information
24 from DHS and HHS, DOJ Defendants direct Plaintiffs to DHS and HHS Defendants
25 who can provide responses and objections to requests directed to those agencies. *See*
26 DHS and HHS Responses to RFP No. 12. Accordingly, DOJ Defendants do not have
27 any responsive documents.
28

1 **REQUEST FOR PRODUCTION NO. 13**

2 All DOCUMENTS relating to the mental health of PUTATIVE CLASS
3 MEMBERS or their children, including but not limited to DOCUMENTS relating to
4 mental health screenings, evaluations, treatments, or diagnoses.

5
6 **Responses and Objections:**

7 DOJ Defendants also object to the request to the extent that it seeks the
8 production of deliberative and pre-decisional or otherwise privileged information.
9 DOJ Defendants object to this request to the extent Plaintiffs purport to require the
10 disclosure of information in the possession, custody, or control of entities other than
11 DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
12 sought from another entity. To the extent that this request appears to seek information
13 from DHS and HHS, DOJ Defendants direct Plaintiffs to DHS and HHS Defendants
14 who can provide responses and objections to requests directed to those agencies. *See*
15 DHS and HHS Responses to RFP No. 13. Accordingly, DOJ Defendants do not have
16 any responsive documents.

17
18 **REQUEST FOR PRODUCTION NO. 14**

19 All DOCUMENTS reflecting any policy, manual, procedure, training material,
20 or other similar document, applicable to or relating to the government's provision of
21 medical services to PUTATIVE CLASS MEMBERS and their children.

22
23 **Responses and Objections:**

24 DOJ Defendants also object to the request to the extent that it seeks the
25 production of deliberative and pre-decisional or otherwise privileged information.
26 DOJ Defendants object to this request to the extent Plaintiffs purport to require the
27 disclosure of information in the possession, custody, or control of entities other than
28

1 DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
2 sought from another entity. To the extent that this request appears to seek information
3 from DHS and HHS, DOJ Defendants direct Plaintiffs to DHS and HHS Defendants
4 who can provide responses and objections to requests directed to those agencies. *See*
5 DHS and HHS Responses to RFP No. 14. Accordingly, DOJ Defendants do not have
6 any responsive documents.

7
8 **REQUEST FOR PRODUCTION NO. 15**

9 All DOCUMENTS relating to or similar to the Inmate Health Message Slip
10 that You submitted in this litigation (D.E. 138), including but not limited to
11 communications regarding the Inmate Health Message Slip or similar documents.

12
13 **Responses and Objections:**

14 DOJ Defendants also object to the request to the extent that it seeks the
15 production of deliberative and pre-decisional or otherwise privileged information.
16 DOJ Defendants object to this request to the extent Plaintiffs purport to require the
17 disclosure of information in the possession, custody, or control of entities other than
18 DOJ Defendants, Fed. R. Civ. P. 34, or seek information that can and should be
19 sought from another entity. Accordingly, DOJ Defendants do not have any responsive
20 documents. Defendant DOJ refers Plaintiffs to DHS and HHS Defendants. To the
21 extent that this request appears to seek information from DHS, HHS Defendants
22 direct Plaintiffs to DHS Defendants who can provide responses and objections to
23 requests directed to that agency. *See* DHS Response to RFP No. 15.

24
25 **REQUEST FOR PRODUCTION NO. 16**

26 All DOCUMENTS YOU have produced or will produce in other litigation
27 related to the ZERO TOLERANCE SEPARATION Policy, including but not limited
28

1 to documents produced in *Ms. L. v. U.S. Immigration and Customs Enforcement*, No.
2 3:18-cv-00428 (S.D. Cal.) (Sabraw, J.).

3
4 Responses and Objections:

5 DOJ Defendants object to this request as overly broad and unduly burdensome
6 and not limited in time or scope. DOJ Defendants object to this request because it is
7 vague in that it seeks documents Defendants “will produce in other litigation.” DOJ
8 Defendants object to this request to the extent it seeks information regarding a “Zero
9 Tolerance Separation Policy,” which does not exist. The Zero Tolerance Policy
10 issued by then-Attorney General Sessions, dated April 6, 2018, sets forth a policy
11 regarding referrals for criminal prosecution under 8 U.S.C. § 1325(a). On May 11,
12 2018, then-Secretary Nielsen issued a memorandum directing “all DHS law
13 enforcement officers at the border to refer all illegal border crossers to the
14 Department of Justice for criminal prosecution to the extent practicable.” DOJ
15 Defendants object to Request for Production No. 16 as overbroad because it seeks
16 documents and information that are not relevant to the claims and defenses in this
17 case. *See* Fed. R. Evid. 401 (defining “relevance”); Fed. R. Civ. Procedure 26(b)(1).
18 DOJ Defendants also object to this request to the extent that it seeks to obtain
19 information protected from disclosure by protective orders entered in other litigation.
20 Accordingly, DOJ Defendants will not produce documents for this request.

1 DATED: December 17, 2019

JOSEPH H. HUNT
Assistant Attorney General
ERNESTO H. MOLINA, JR.
Deputy Director
SARAH B. FABIAN
NICOLE N. MURLEY
Senior Litigation Counsel
MICHAEL HEYSE
MICHELLE R. SLACK
LANCE JOLLEY
LINDSAY M. VICK
Trial Attorneys

9
10 /s/ Nicole N. Murley
11 NICOLE N. MURLEY
12 Trial Attorney
13 U.S. Department of Justice
14 Office of Immigration Litigation
15 District Court Section
16 P.O. Box 868,
17 Washington, DC 20044
18 Telephone: (202) 616-
19 0473
20 Facsimile: (202) 616-8962
21 Nicole.Murley@usdoj.gov

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23
24
25
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27
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Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Nicole N. Murley, am a citizen of the United States and am at least eighteen years of age. My business address is 450 Fifth Street, NW, Washington, DC 20001. I have caused service of the accompanying Supplemental Responses to Plaintiffs' Requests for production served Plaintiffs' counsel by electronic mail. I declare under penalty of perjury that the foregoing is true and correct.

DATED: December 17, 2019

/s/ Nicole N. Murley
NICOLE N. MURLEY
Senior Litigation Counsel
U.S. Department of Justice
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Nicole.Murley@usdoj.gov
Telephone: (202) 616-0473
Fax: (202) 616-4923
Attorney for Defendants